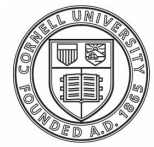

6-21-2000

State of New York Public Employment Relations Board Decisions from June 21, 2000

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from June 21, 2000

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SENECA FALLS SUPPORT STAFF ASSOCIATION,

Petitioner,

- and -

CASE NO. C-4954

SENECA FALLS CENTRAL SCHOOL DISTRICT,

Employer,

- and -

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

JANET AXELROD, GENERAL COUNSEL (HAROLD G. BEYER of counsel), for Petitioner

RANDY J. RAY, for Employer

NANCY E. HOFFMAN, GENERAL COUNSEL (MIGUEL ORTIZ of counsel), for Intervenor

BOARD DECISION AND ORDER

This matter comes to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA), to a decision of an Administrative Law Judge (ALJ) dismissing CSEA's objections to a petition filed by the Seneca Falls Support Staff Association (SFSSA) seeking decertification of CSEA and

its own certification as the exclusive bargaining agent for a unit of support staff of the Seneca Falls Central School District (employer).

CSEA excepts to the ALJ's finding of fact and conclusions of law that:

1. SFSSA was an employee organization on November 29, 1999 at the time of filing the instant petition.
2. Committee for Change was one and the same as SFSSA.
3. The names SFSSA and Committee for Change were interchangeable.
4. SFSSA had an existence independent of NEA.

Based upon our review of the record and consideration of the parties' arguments, we affirm the decision of the ALJ.

FACTS

A full exposition of the facts is recited in the ALJ's decision, thus we will confine ourselves to the salient facts relevant to the exceptions raised by CSEA.

During the second week of November 1999, Billie Brinkeroff, Gary French, Jack Rowles and Bill Jones met to discuss what they considered poor representation by CSEA. They scheduled a meeting with the entire support staff to raise the subject of changing unions. They called themselves the Committee for Change.

Ms. Brinkeroff, a former treasurer of the CSEA local, communicated with an NEA/NY UniServ representative, Michael E. Lynch, Jr., to attend the meeting of the support staff scheduled for November 15, 1999.

Subsequent to the meeting held on November 15, 1999, Ms. Brinkeroff and others solicited the support staff to obtain the requisite number of signatures in support

of a decertification/certification petition to be filed by the "Seneca Falls Support Staff Association".[1]

The petition to decertify CSEA and be certified as the bargaining representative for the support staff was filed by SFSSA with PERB on November 19, 1999 by Mr. Lynch as the authorized representative of SFSSA.

In January 2000, the employees elected three co-chairs for the organization. On February 9, 2000, the membership of SFSSA met and adopted the constitution that had been drafted by the organizing committee.

On February 15, 2000, a hearing was held before the ALJ pursuant to §201.9(a)(2) of the Rules of Procedure. The ALJ rendered a decision on March 29, 2000 dismissing CSEA's objections to the November 29, 1999 petition filed on behalf of SFSSA and holding that, as directed by the Director of Public Employment Practices and Representation (Director), an election be held by secret ballot among the employees in the at-issue unit.

DISCUSSION

CSEA's principle exceptions contend that SFSSA was not an employee organization on November 29, 1999 or, in the alternative, it was merely a "shell organization" for NEA.

Section 201.5 of the Public Employees' Fair Employment Act (Act) defines the term "employee organization" to mean "an organization of any kind having as its

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[1]Mr. Lynch had suggested to Ms. Brinkeroff that the Committee adopt the name "Seneca Falls Support Staff Association" for purposes of filing the petition with the Public Employment Relations Board (PERB). As Mr. Lynch testified on cross-examination, this was a generic-type title which described the unit to be affiliated with NEA/NY.

primary purpose the improvement of terms and conditions of employment of public employees . . . ." PERB's interpretation of this section of the Act is not without historical precedent as it has been applied to CSEA. In *Civil Service Employees Association, Inc. v. PERB*,[2] the Appellate Division opined that "[w]hile PERB has found that PEF was created as a vehicle through which NYSUT and SEIU could jointly supplant CSEA . . . this is not inconsistent with its primary purpose of improving terms and conditions of employment for public employees. . . . this reasoning . . . supports a more liberal construction of the term 'employee organization'".

It is apparent from the testimony of Ms. Brinkeroff that she and the other employees who formed the Committee for Change were dissatisfied with CSEA's representation of their interests and sought to be represented by a different employee organization. The ALJ found SFSSA's witnesses to be credible in the face of conflicting testimony presented by CSEA.[3]

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[2]66 AD2d 38, 12 PERB ¶7001, at 7005 (3d Dep't 1979), *aff'd in pertinent part*, 46 NY2d 1005, 12 PERB ¶7005 (1979) [CSEA objected to PEF's petition for decertification of CSEA as the exclusive bargaining representative for the state's PS&T unit and certification of PEF as its bargaining agent on the grounds, *inter alia,* that PEF was not an employee organization within the meaning of the Act.] *See also State of New York*, 10 PERB ¶3093 (1977), where the Board initially found PEF to be an employee organization and dismissed CSEA's exceptions that PEF was created to supplant CSEA, that PEF was an organization even in the absence of current employee members, and that PEF would establish membership upon certification.

[3]*See New York City Transit Auth. v. PERB*, 154 AD2d 680, 22 PERB ¶7036, at 7058 (2d Dep't 1989), *order modified*, 154 AD2d 680, 22 PERB ¶7037 (2d Dep't 1989) ["It is the duty of the administrative agency and not the court to weigh the evidence and resolve conflicting testimony".] *See also DeVito v. Kinsella*, 234 AD2d 640, 642, 29 PERB ¶7021, at 7057(3d Dep't 1996). [It is not the function of a reviewing court to "reject testimony or substitute its judgment on matters of credibility"].

Since Ms. Brinkeroff initiated the contact with NEA/NY through Mr. Lynch, and there was no evidence adduced to rebut that she and her fellow employees were acting independently of NEA/NY in the conduct of their business, we cannot conclude that either the Committee for Change or SFSSA was a shell organization for NEA/NY.

CSEA's reliance on *Manhasset Union Free School District*[4] is misplaced. There was no evidence adduced by CSEA that, apart from affiliation with NEA/NY, SFSSA would not be the exclusive support staff bargaining representative. Furthermore, CSEA failed to demonstrate that SFSSA would be controlled by NEA, thereby negating CSEA's reliance on *Northport/East Northport UFSD*.[5]

Based on the foregoing, CSEA's exceptions are denied and the decision of the ALJ is affirmed.

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[4]12 PERB ¶3059 (1979), where the petitioning organization had entered into a coalition agreement with another employee organization, effectively abandoning part of the unit for which it sought to be certified as the exclusive bargaining agent, despite its representation to the employer and to PERB that it alone was the exclusive bargaining agent.

[5]27 PERB ¶3053 at 3114 (1994), *motion for reconsideration denied*, 27 PERB ¶3061 (1994), *confirmed sub nom. Boyle v. PERB*, 28 PERB ¶7001 (Sup. Ct. Kings County 1995), where we held that an organization is not an employee organization entitled to certification "if the conduct of its affairs bearing upon the representation of unit employees is controlled or subject to the control of another entity which is not a party to the petition." (footnote omitted). *See also Board of Educ. of the City Sch. Dist. of the City of New York*, 15 PERB ¶3041, *motion for reconsideration denied*, 15 PERB ¶3060 (1982).

IT IS, THEREFORE, ORDERED that the matter be remanded to the ALJ for further processing.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CITY OF POUGHKEEPSIE,

Charging Party,

-and-

CASE NO. U-20119

POUGHKEEPSIE PROFESSIONAL FIRE FIGHTERS' ASSOCIATION, LOCAL 596, I.A.F.F., AFL-CIO-CLC,

Respondent.

PETER C. McGINNIS, GENERAL COUNSEL (MARILYN D. BERSON of counsel), for Charging Party

GLEASON, DUNN, WALSH & O'SHEA (RONALD G. DUNN of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions and cross-exceptions filed, respectively, by the City of Poughkeepsie (City) and the Poughkeepsie Professional Fire Fighters' Association, Local 596, IAFF, AFL-CIO-CLC (Association), to a decision by an Administrative Law Judge (ALJ). The City's charge alleges that the Association refused to negotiate in violation of §209-a.2(b) of the Public Employees' Fair Employment Act (Act) when it submitted for compulsory interest arbitration several demands for a

procedure under which determinations regarding benefits under General Municipal Law (GML) §207-a would be made.[1]

FACTS

The City alleges that the Association's proposal contains many nonmandatory subjects of negotiation.

The ALJ grouped several sections of the proposal for purposes of assessing negotiability. Sections numbered 13, 14, 19, 20 and 23 of the proposed procedure would establish a binding arbitration system for the resolution of disputes regarding an employee's initial and continuing eligibility for GML §207-a benefits. Sections 13 and 14 involve initial eligibility determinations. Sections 19, 20 and 23 involve disputes arising from a termination of GML §207-a benefits. Relying upon our decision in *City of Watertown* (hereinafter *Watertown*),[2] the ALJ held that arbitration to resolve disputes about an employee's eligibility for benefits under GML §207-a is a mandatory subject of negotiation.

Sections 7, 11, 12, 17 and 18 establish the fire chief as the one and only City agent responsible for making initial and continuing eligibility determinations. The ALJ held these sections to be nonmandatory subjects of negotiation because the City has a managerial prerogative to appoint its own agent for purposes of making the eligibility

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[1]GML §207-a provides for the payment of salary and medical benefits to fire fighters who are injured or taken ill in the performance of their duties.

[2]30 PERB ¶3072 (1997), *confirmed*, 31 PERB ¶7013 (Sup. Ct. Albany County 1998), *rev'd*, 263 AD2d 797, 32 PERB ¶7016 (3d Dep't 1999), *motion for leave to appeal granted*, 94 NY2d 751 (1999), 33 PERB ¶7003, *rev'd*, ___ NY2d ___, 2000 NY Lexis 902 (2000).

determinations which would then be subject to review under the proposed arbitration procedure. According to the ALJ, making the fire chief the one and only person who could act on behalf of the City deprived the City of its managerial prerogative.

Section 6 of the proposal, reiterating the City's right under GML §207-a to require an applicant for benefits to submit to medical examinations, was held mandatorily negotiable under *City of Cohoes* (hereinafter *Cohoes*).[3] In relevant part, we held in *Cohoes* that demands by either party calling for the incorporation of statutory language embracing terms and conditions of employment are mandatorily negotiable absent prohibitive policy considerations. Section 10, which characterizes any leave from work taken by an employee found eligible for GML §207-a benefits as GML §207-a leave, was found mandatorily negotiable for the same reason as section 6. Section 15 empowers the fire chief to periodically reassess an employee's eligibility for benefits as authorized by GML §207-a. According to the ALJ, he would have held section 15 mandatorily negotiable because it again sought only to incorporate statutory language into a collective bargaining agreement. The ALJ held the demand nonmandatory, however, because, as with sections 7, 11, 12, 17, and 18, the reference to the fire chief as the only person responsible for that review interfered with the City's managerial prerogative.

The City excepts to those parts of the ALJ's decision holding sections of the GML §207-a procedure to be mandatorily negotiable, its main objection being to the

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[3]31 PERB ¶3020 (1998), *appeal dismissed as premature*, 31 PERB ¶7017 (Sup. Ct. Albany County 1998), *confirmed,* 32 PERB ¶7026 (Sup. Ct. Albany County 1999), *petition for review pending*.

arbitration aspects of the procedure. It argues that the de novo arbitration proposed by the fire fighters to resolve disputes about an employee's initial and continuing eligibility for GML §207-a benefits is not mandatorily negotiable. The City urges us to either distinguish or reverse *Watertown* as to the negotiability of demands for arbitration of GML §207-a eligibility disputes. Regarding sections 6 and 10, the City argues that it should not be obligated to negotiate or arbitrate demands calling for the incorporation of statutory language into a contract.

The Association excepts to the decision of the ALJ insofar as he held the sections referring to the fire chief to be nonmandatory subjects of negotiation. The Association argues that the ALJ assigned to conference the case incorrectly excluded from the record evidence which would have established that the parties reached an agreement designating the fire chief as the City's agent for the relevant purposes after the charge was filed. According to the Association, those sections are no longer in dispute between the parties and the ALJ should not have made any determination regarding the negotiability of sections 7, 11, 12, 15, 17 or 18. The Association argues also that the ALJ's merits disposition of the negotiability of these several sections is incorrect.

In response to the Association's cross-exceptions, the City argues that the Association should not be allowed to raise the existence of an agreement between the parties to any sections held nonmandatory by the ALJ because that issue was not raised in the Association's answer and it did not object to the conference ALJ's letter which sets forth the specific documents constituting the record upon which the case

would be decided. In any event, the City alleges that there never was any final agreement between the parties on the sections of the Association's proposal referring to the fire chief.

For the reasons that follow, we reverse, in part, and affirm, in part, the ALJ's decision.[4]

DISCUSSION

Demands 13, 14, 19, 20 and 23

The Association's demands incorporate inseparable elements which render the proposals nonmandatory.[5]

Demand 13 is the precursor to Demand 14. These demands would establish a de novo binding arbitration procedure to appeal the initial determination of GML §207-a eligibility.

The City's denial of an employee's application for §207-a disability benefits falls within the authority vested exclusively within municipalities by the statute.[6] The

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[4]We do not reach any determination, however, as to the negotiability of section 7. Section 7 was not in dispute between the parties according to the conference ALJ's final description of the scope of the parties' dispute.

[5]*City of Oneida PBA*, 15 PERB ¶3096 (1982); *CSEA, Inc., Niagara Chapter*, 14 PERB ¶3049 (1981); *Amherst Police Club, Inc.*, 12 PERB ¶3071 (1979); *City of Rochester*, 12 PERB ¶3010 (1979); *Town of Haverstraw*, 11 PERB ¶3109 (1978), *confirmed in relevant part, sub nom. Town of Haverstraw v. PERB* ¶7007 (Rockland County Sup. Ct. 1979), *aff'd*, 75 AD2d 874, 13 PERB ¶7006 (2d Dep't 1980); *Pearl River Union Free Sch. Dist.*, 11 PERB ¶3085 (1978).

[6]*See DePoalo v. County of Schenectady*, 200 AD2d 277, 280 (3d Dep't 1994), *aff'd*, 85 NY2d 527; *Schenectady County Sheriff's Benevolent Ass'n v. McEvoy*, 124 AD2d 911, 912 (3d Dep't 1986); *Brzostek v. City of Syracuse*, ___ AD2d ___, 697 NYS2d 423 (4th Dep't 1999).

Association has misinterpreted the import of our decision in *Watertown* where we held that the arbitration of disputes involving GML §207-c eligibility is mandatorily negotiable.

In *Watertown*, the PBA demand acknowledged the City's right to make the initial determination and it merely requested that any such dispute over that initial determination be processed to arbitration pursuant to PERB's Voluntary Dispute Resolution Procedure. There was no reference in the demand, either express or implied, that there would be a de novo review of the City's initial determination. Rather, we determined the demand to be a substitute appeal procedure in order to avoid commencing an Article 78 proceeding.

Here, however, the Association expressly demanded a de novo hearing of the City's initial determination. Black's Law Dictionary defines de novo as "[A]new; afresh; a second time."[7] It is the inclusion of this language which renders nonmandatory the Association's demands for de novo review. Such demands are contrary to our decision in *Watertown* because we did not hold in *Watertown* that the union would be entitled to a de novo second hearing. We merely determined that the union's demand to appeal to arbitration disputes over the initial determination were mandatorily negotiable as a reasonable substitute for Article 78 review.

Demand 19 is the precursor to Demands 20 and 23. These demands would establish a de novo binding arbitration procedure to appeal the termination of GML §207-a benefits.

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[7]p. 483 (4th ed. 1968).

While the statute, GML §207-a, is devoid of an administrative procedure to implement the statutory scheme, the courts have provided guidance in its interpretation. The Court of Appeals has determined that the statute "does not trigger a hearing unless a firefighter on section 207-a status has brought that determination [the municipality's medical determination of fitness] into issue by the submission of a report by a personal physician expressing a contrary opinion. Once evidence of continued total disability has been submitted . . . the [municipality's] order to report for duty may not be enforced, or benefits terminated, pending resolution of an administrative hearing, which itself is subject to review under CPLR article 78."[8]

The standard of review in an Article 78 is something other than de novo depending on the nature of the proceeding from which the municipality's determination was made. It is the City's right to make the determination of fitness which is inviolate and the forum to challenge that determination is incidental. Neither the statute nor case law contemplates a de novo review procedure.

Our decision today in no way affects our prior decision in *Watertown* regarding the ability of the parties to negotiate a review procedure which ends in arbitration.

With respect to sections 6 and 10, the City would have us reverse that part of *Cohoes* concerning the negotiability of demands seeking the incorporation of statutory language into a collective bargaining agreement. As we decline to reverse *Watertown*, so do we decline to reverse *Cohoes* which the ALJ correctly applied to sections 6 and 10.

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[8]*Uniform Firefighters of Cohoes, Local 2562, IAFF v. City of Cohoes,* 2000 N.Y. Lexis 901.

Sections 11, 12, 15, 17 and 18 were held nonmandatory because the ALJ concluded they established the fire chief as the City's exclusive agent for making initial and continuing GML §207-a eligibility determinations. The Association argues in its exceptions that the hearing ALJ should not have ruled on the negotiability of these several demands because the conference ALJ incorrectly excluded evidence that the parties had reached an agreement about the role of the fire chief.

Without deciding whether the conference ALJ should have resolved any issue as to whether and to what extent the parties had reached an agreement designating the fire chief as the City's agent, the conference ALJ, on written notice to the parties, ruled that the record would consist of certain documents only. The documents constituting the record for decision do not evidence any agreements having been reached by the parties in any relevant respect. No objection was made by either party to the ALJ's description of the record upon which a decision would issue. There having been no objection raised to the ALJ about the scope of the record, neither party may raise that issue to us for the first time on exceptions.[9] As the ALJ who issued the decision did not have a record containing any evidence of any agreements regarding the role of the fire chief, the ALJ correctly reached the negotiability of those several demands.

Had those several sections allowed the City to designate its agent for the purpose of making eligibility determinations, they would have been mandatorily negotiable. The ALJ, however, read the reference to the fire chief as limiting and not

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[9]Rules of Procedure, §§204.7(h)(2) and 212.3. *See also State of New York (Workers' Compensation Bd.)*, 32 PERB ¶3017 (1999).

merely illustrative and that reading is a reasonable one for the reasons stated by the ALJ. We affirm, on that basis.

For the reasons set forth above, the ALJ's decision is, therefore, affirmed, in part, and reversed, in part.

IT IS, THEREFORE, ORDERED that the Association immediately withdraw from interest arbitration its demands relating to sections 11, 12, 13, 14, 15, 17, 18, 19, 20 and 23. The charge in all other respects must be, and it hereby is, dismissed.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, STEUBEN COUNTY LOCAL 851, COUNTY EMPLOYEES UNIT,

Charging Party,

- and -

CASE NO. U-20359

COUNTY OF STEUBEN,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (PAMELA BAISLEY of counsel), for Charging Party

FREDERICK H. AHERNS, JR., ESQ., for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Steuben County Local 851, County Employees Unit (CSEA) to a decision of an Administrative Law Judge (ALJ) dismissing its improper practice charge alleging that the County of Steuben (County) violated §§209-a.1(a), (c) and (d) of the Public Employees' Fair Employment Act (Act) when it failed to return two public health nurses, who had participated in protected activities, to their regular assignments following thirty-day disciplinary suspensions.

At the close of CSEA's case, the County moved that the charge be dismissed for failure to prove a *prima facie* case. The ALJ reserved on the motion and the County went forward with its case.

The ALJ found that the two nurses, Linda Laker and Mary Ann Mitchell, had been involved in protected activities, that the County was aware of their protected activities but that the employees' reassignment upon their return from disciplinary suspensions was not motivated by anti-union animus. The ALJ denied the motion to dismiss but nonetheless dismissed the charge upon consideration of the record as a whole because she determined that the reassignment of Laker and Mitchell upon their return from disciplinary suspension was consistent with the treatment of other nurses not engaged in protected activities, was premised upon changes in the patients' needs and was based on legitimate business concerns. Further, the ALJ found that there was no evidence that Kathy Maine and Dawn Lindsay, the supervisors who decided upon the reassignments, were improperly motivated.

CSEA excepts to the ALJ's decision, arguing that there is sufficient evidence of anti-union animus on the part of the County, in general, and Maine and Lindsay, individually, to sustain the charge. CSEA further argues that the reasons given for the reassignments were pretextual and do not support the ALJ's conclusions. The County, in its response, supports the ALJ's decision.

Based upon our review of the record and consideration of the parties' arguments, we affirm the decision of the ALJ.

FACTS

At all times relevant to the instant charge, Laker and Mitchell were employed by the County as public health nurses. From July 1997 to February 1998, the County experienced a decrease in Public Health and Nursing Services (PHNS) patient caseload from 620 patients to 440 patients.[1] In December 1997, Laker and Mitchell were selected by their co-workers to serve as representatives on a joint County-CSEA committee created to study staffing and scheduling issues resulting from the patient decrease. In January 1998, Laker was appointed by the CSEA local president Bonnie Sprague as the CSEA representative for the PHNS nurses. Laker and Mitchell also initiated a number of grievances on assignment and scheduling issues beginning in February 1998.

During the months of December 1997 and January and February 1998, the committee met to attempt to resolve the issues associated with the decrease in patient caseload. No agreements were reached and the County instituted a seven-day work schedule and placed the PHNS nurse on-call status. Grievances and improper practice charges were filed by CSEA regarding these changes. The situation came to a head in February 1998, when Laker learned that Victoria Fuerst, PHNS Director, had sent a letter to the County Legislature, addressing the patient caseload decrease and outlining

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[1]The decrease was attributed to a change in federal medicaid reimbursement law.

her responses to it.[2] Laker approached a CSEA labor relations specialist, Terri Menkiena, to draft a response letter. The letter, revised by the public health nurses, was signed by fourteen of them, including Laker and Mitchell, and sent to each member of the County Legislature. Attached to the letter was a list of the names of patients impacted by Fuerst's changes. Laker and Mitchell also participated in a March 1, 1998 meeting with Menkiena, Sprague, CSEA vice-president Debbie Hall and County Administrator Dan O'Donnell.

Thereafter, all fourteen nurses were questioned by the County Attorney, Frederick Aherns, O'Donnell and Fuerst regarding their involvement in the sending of the letter to County legislators.[3] In mid-May, Notices of Discipline were served on Laker and Mitchell, resulting in their immediate suspension without pay for thirty days.[4] CSEA has filed disciplinary grievances challenging the notices of discipline. The County is seeking the termination of Laker and Mitchell for their breach of patient confidentiality in divulging patient names.

Laker and Mitchell returned to work from their suspensions on or about June 17, 1998. Mitchell received a full caseload upon her return, but it was a caseload previously managed by another nurse. The caseload was more rural than her previous caseload,

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[2]Fuerst had created a seven-day work schedule, abolished three nurse positions and discontinued the use of part-time public health nurses to cover weekends.

[3]Apparently, the list of patient names was attached to the letter by Laker and with Mitchell's knowledge, but the record is not clear whether the other nurses signed the letter before or after the list was attached.

[4]Both were given the opportunity to resign but chose not to do so.

resulting in more reimbursable travel mileage each month. Mitchell's supervisor, Maine, is a member of the bargaining unit. She testified that she made the decision to reassign Mitchell upon her return from suspension because she had given Mitchell's previous caseload to a nurse who had been having some difficulties with a more rural territory. Maine testified that she had made the decision to reassign the other nurse even before Mitchell's suspension but was waiting for the right opportunity to do so. When Mitchell left on her suspension, Maine assigned Mitchell's caseload to the other nurse and covered that nurse's caseload herself until Mitchell's return from suspension. She then reassigned the other nurse's caseload to Mitchell.

Laker received patient assignments on a day-to-day basis until July 1, 1998, when she was assigned the caseload of a nurse who had just resigned. Her travel mileage has not increased as a result of the reassignment. Lindsay, Laker's immediate supervisor, is a member of the CSEA bargaining unit. Lindsay testified that she alone made the decision to reassign Laker because when Laker was suspended, she reassigned Laker's caseload to another nurse for continuity of assignment. While Laker was suspended, Lindsay took over the other nurse's previous caseload. When Laker returned from her suspension, Lindsay began assigning new patients to her until the resignation of one of the public health nurses opened an area that could be covered by Laker.

The County presented evidence that established that public health nurses had been involuntarily reassigned in the past when there had been a change in patient caseloads, a change in the needs of the patients in the geographic areas serviced by

PHNS,[5] an extended absence or leave by a public health nurse or an operational need, such as more direct supervision of a public health nurse, as was the case in Mitchell's reassignment.

DISCUSSION

CSEA's charge is limited to the caseload assignments of Laker and Mitchell upon their return from suspension. CSEA argues that Laker and Mitchell would not have been reassigned but for their protected activities. In order to establish improper motivation under §§209-a.1(a) and (c) of the Act, it must be proven that an employee had been engaged in protected activities and that the employer had knowledge of and acted because of those activities.[6] If the charging party proves a *prima facie* case of improper motivation, the burden of persuasion shifts to the respondent to establish that its actions were motivated by legitimate business reasons.[7] The charging party can establish "[t]he existence of anti-union animus . . . by statements or by circumstantial evidence, which may be rebutted by presentation of legitimate business reasons for the

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[5]In 1997, a portion of the area covered by the Corning office was transferred to the Bath office, resulting in the transfer of one nurse. In early 1998, Laker and another nurse were transferred from the Hornell office to the Bath office and two other nurses were transferred from Bath to Corning.

[6]*Town of Independence*, 23 PERB ¶3020 (1990). *See also City of Salamanca*, 18 PERB ¶3012 (1985); *City of Corning*, 17 PERB ¶3022 (1984); *City of Albany*, 4 PERB ¶3056 (1971).

[7]*City of Salamanca*, *supra*; *City of Albany*, 3 PERB ¶4507, *aff'd*, 3 PERB ¶3096 (1970), *confirmed in pertinent part*, 36 AD2d 348, 4 PERB ¶7008 (3d Dep't 1971), *aff'd*, 29 NY2d 433, 5 PERB ¶7000 (1972).

actions taken, unless found to be pre-textual."[8] Proof that the employer's stated reasons for its conduct are pretextual may constitute such circumstantial evidence.[9]

The record evidences that Laker and Mitchell were engaged in protected activities and that both their immediate supervisors and the head of PHNS were aware of those activities.

CSEA points to Laker's involuntary assignment in January 1998 and the leveling of disciplinary charges against only Laker and Mitchell as evidence of the County's animus. However, Laker's reassignment was part of the reassignment of four public health nurses and the ALJ credited the legitimate business reasons for those reassignments testified to by Lindsay. Whatever the motivation for the County's decision to discipline Laker and Mitchell for the release of patient names,[10] neither Lindsay nor Maine were part of that decision-making process and there is no evidence that Fuerst, O'Donnell or Aherns were involved in the reassignments of Laker and Mitchell. There is also no record evidence that Lindsay and Maine were motivated by anything other than caseload concerns and patient needs in their decisions to reassign Laker and Mitchell upon their return from their thirty-day suspensions. Finally, the

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[8]*Town of Independence*, *supra*, at 3038. *See also Convention Ctr. Operating Corp.*, 29 PERB ¶3022 (1996); *City of Rye*, 28 PERB ¶3067 (1995), *confirmed*, 234 AD2d 640, 29 PERB ¶7021 (3d Dep't 1996).

[9]*See City of Utica*, 24 PERB ¶3044 (1991); *Town of Henrietta*, 28 PERB ¶4605, *aff'd*, 28 PERB ¶3079 (1995).

[10]Those disciplinary charges are the subject of disciplinary grievances filed by CSEA on behalf of Laker and Mitchell and are not before us.

reassignments were consistent with the County's practice of reassigning caseloads when a public health nurse was absent from work for an extended period of time or to otherwise meet PHNS operational needs.

For the reasons set forth above, CSEA's exceptions are denied and the decision of the ALJ is affirmed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Charging Party,

- and -

CASE NO. U-20478

CITY OF NEWBURGH,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (ROBERT REILLY of counsel), for Charging Party

HITSMAN, HOFFMAN & O'REILLY LLC (JOHN F. O'REILLY of counsel), for Respondent

BOARD DECISION ON MOTION AND ORDER

This case comes to us on motion by the City of Newburgh (City) pursuant to §212.3(h) of our Rules of Procedure (Rules).[1] The City asks us to review a ruling by the Director of Public Employment Practices and Representation (Director) reopening this

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[1]Section 212.3(h) of the Rules provides, in relevant part, as follows:

> All motions and rulings . . . shall be part of the record . . . and, unless expressly authorized by the board, shall not be appealed directly to the board, but shall be considered by the board whenever the case is submitted to it for decision.

case at the request of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA), after it had been closed administratively.[2]

We do not usually review rulings of the Director or an Administrative Law Judge until such time as all proceedings have been concluded.[3] This policy is designed to prevent the delay inherent in piecemeal review and the potential prejudice resulting to the parties therefrom. An interlocutory appeal from a ruling made in conjunction with the processing of a case is by our permission only pursuant to Rules §212.3(h). We have granted permission for an interlocutory appeal only in a few cases presenting extraordinary circumstances.[4] Application of that standard has resulted in our rejecting most requests for permission to appeal. Similarly, we do not believe that this case presents circumstances so extraordinary as to warrant an interlocutory appeal.

The rationale for the City's request for an interlocutory appeal is that it could and should be spared the expenditure of resources which might be incurred in litigating a

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[2]The matter had been placed on PERB's "hold calendar" until February 14, 2000. CSEA representatives failed to request a continuation of the "hold" in a timely fashion and the matter was, therefore, administratively closed by the Director. CSEA then requested that the Director reopen the matter, which he did over the objection of the City.

[3]*See Council 82, AFSCME*, 32 PERB ¶3040 (1999); *Watertown City Sch. Dist.*, 32 PERB ¶3022 (1997); *United Transp. Union, Local 1440*, 31 PERB ¶3027 (1998); *State of New York (Div. of Parole)*, 25 PERB ¶3007 (1992).

[4]*See New York State Housing Finance Agency*, 30 PERB ¶3022 (1997); *Greenburgh No. 11 Union Free Sch. Dist.*, 28 PERB ¶3034 (1995); *Mt. Morris Cent. Sch. Dist.*, 26 PERB ¶3085 (1983); *County of Nassau*, 22 PERB ¶3027(1989).

charge that should never have been reopened after it was closed.[5] The City is no differently situated in this regard, however, than any other respondent which has a potentially dispositive defense to a charge or a charging party which claims that a favorable ruling on an interlocutory appeal will avoid the time and expense of a new hearing which might be necessitated by a reversal on appeal of some aspect of an ALJ's final decision. Like the City here, those other respondents and charging parties have a claim that permission for interlocutory appeal might save them time and money.[6] We have not been receptive to such requests for interlocutory appeals from rulings adverse to such parties in the past and the circumstances of this case do not lend themselves to any different conclusion. If this charge proceeds to disposition by an ALJ with or without a hearing, and if that disposition is adverse to the City, the question as to whether the charge should have been reopened can be raised to us by the City on appeal from that decision. As the issue is preserved for eventual appeal by the City, its interests are protected and permission for interlocutory appeal is not warranted.

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[5]*See Town of Shawangunk*, 29 PERB ¶3050 (1996), where the interlocutory appeal from the Director's decision to reopen an improper practice charge that had been deemed withdrawn was denied.

[6]*Id.*; *Greenburgh No. 11 Union Free Sch. Dist.*, *supra* (ruling denying elimination of certain allegations in a charge); *Union-Endicott Cent. Sch. Dist.*, 28 PERB ¶3006 (1995) (notice of claim); *Mt. Morris Cent. Sch. Dist.*, *supra* (reopening of conditionally dismissed charge); *State of New York (State Inc. Fund) (Culkin)*, 25 PERB ¶3063 (1992) (timeliness).

For the reasons set forth above, the City's motion is denied. SO ORDERED.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DANIEL M. MANKOWSKI,

Charging Party,

- and -

CASE NO. U-21512

PUBLIC EMPLOYEES FEDERATION,

Respondent,

- and -

STATE OF NEW YORK,

Employer.

DANIEL M. MANKOWSKI, *pro se*

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Daniel M. Mankowski to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his improper practice charge. The charge, sworn to February 23, 2000, alleged, *inter alia,* that the Public Employees Federation (PEF) violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act) by failing to afford him proper

representation. Mankowski's former employer, the State of New York (State), is made a party to this proceeding pursuant to §209-a.3 of the Act.[1]

FACTS

On February 23, 2000, Mankowski filed an improper practice charge alleging PEF failed to fairly represent him in certain grievances that remain outstanding since his retirement from the State in 1990. Mankowski relies upon those unresolved grievances as the basis for the instant charge against PEF.[2]

On March 1, 2000, the Assistant Director of Public Employment Practices and Representation (Assistant Director) informed Mankowski that his charge was deficient because it had not been filed within four months of any conduct attributable to PEF. Mankowski's letter of March 7, 2000 in answer to the Assistant Director's letter was unresponsive to the deficiency notice.

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[1]Section 209-a.3 of the Act provides that:

> [T]he public employer shall be made a party to any charge filed under [§209-a.2] which alleges that the duly recognized or certified employee organization breached its duty of fair representation in the processing of or failure to process a claim that the public employer has breached its agreement with such employee organization.

[2]The charge references a prior improper practice charge filed by Mankowski against PEF which was dismissed. The instant charge incorrectly characterizes the rationale behind the dismissal. It is significant to note that the ALJ found that Mankowski had been represented by an attorney regarding the grievances and that attorney had been involved in settlement discussions with PEF representatives. *Public Employees Fed'n*, 27 PERB ¶4642 at 4937 (1994).

On March 17, 2000, the Director of Public Employment Practices and Representation (Director) dismissed the charge as untimely. We agree.

DISCUSSION

Section 204.1(a)(1) of PERB's Rules of Procedure (Rules) mandates that improper practice charges be filed within four months of the date of the conduct which is the subject of the charge. While the Rules pertaining to the filing of exceptions to the decisions by the Director and Administrative Law Judges provide for extensions of time because of extraordinary circumstances (§213.4),[3] the Rules do not provide for any extension of time to file an improper practice charge.

The Assistant Director's letter of March 1, 2000 informed Mankowski that the deficiency was the untimeliness of the charge. It was filed on February 23, 2000, more than four months after Mankowski's last contact with PEF on April 17, 1998. Any charge Mankowski has against PEF must be measured from this date in order to ascertain compliance with the four-month limitation of time set forth in the Rules.

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[3]*New York City Transit Auth.*, 33 PERB ¶3013 (2000); *Auburn Indus. Dev. Auth.*, 15 PERB ¶3075 (1982). For other cases discussing attempts to toll the four-month limitation of time, *see New York City Transit Auth. (Dye),* 30 PERB ¶3032 (1997) (allegations of misconduct of Transit Authority more than four months after disciplinary hearing); *State of New York (Governor's Office of Employee Relations)*, 22 PERB ¶3009 (1989) (four-month limitation in Rules runs from the date the adverse action took place and not from the date when improper motivation is ascribed to it);*Board of Educ. of the City Sch. Dist. of the City of New York*, 19 PERB ¶3066 (1986) (exhaustion of administrative review proceedings); *Transit Workers Union, Local 100 (Connolly)*, 28 PERB ¶4678 (1995) (attempts to resolve dispute through internal union procedure rejected); *Public Employees Fed'n (Reese)*, 26 PERB ¶4589 (1993) (illness preventing timely filing rejected); *Port Jefferson Teachers Ass'n (Handler)*, 20 PERB ¶4508 (1987) (charge alleging union's negligence prevented timely filing rejected).

Based on the foregoing, Mankowski's exception in the form of an appeal is denied and the decision of the Director is affirmed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED FEDERATION OF POLICE OFFICERS, INC.,

Petitioner,

- and -

CASE NO. C-4970

TOWN OF SHANDAKEN,

Employer.

THOMAS P. HALLEY, ESQ., for Petitioner

ROEMER, WALLENS & MINEAUX, LLP (MARY M. ROACH of counsel), for Employer

BOARD DECISION AND ORDER

On January 12, 2000, the United Federation of Police Officers, Inc. (petitioner), filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Town of Shandaken (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

Included: Full-time and part-time police officers.

Excluded: Chief of Police.

Pursuant to that agreement, a secret-ballot election was held on May 10, 2000, at which a majority of ballots were cast against representation by the petitioner.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

DATED: June 21, 2000
Albany, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PUTNAM COUNTY SHERIFF'S OFFICE MANAGERS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4609

COUNTY OF PUTNAM,

Employer,

-and-

SHERIFF OF THE COUNTY OF PUTNAM,

Intervenor.

GERALD P. BUTLER, JR., for Petitioner

DONOGHUE, THOMAS, AUSLANDER & DROHAN (JOHN M. DONOGHUE and STUART S. WAXMAN of counsel), for Employer

SHERIFF ROBERT THOUBORRON, *pro se*

BOARD DECISION AND ORDER

On November 21, 1996, the Putnam County Sheriff's Office Managers Association (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the County of Putnam (employer).

Pursuant to this Board's decision dated January 24, 2000, a secret-ballot election was held in the following unit on April 26, 2000.

Included: Road patrol, corrections and communications captains and corrections lieutenants.

Excluded: All other employees.

A majority of ballots were cast against representation by the petitioner.

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION,

Petitioner,

-and- **CASE NO. C-4928**

COUNTY OF COLUMBIA,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the United Public Service Employees Union has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All employees of the County, except as listed below.

Excluded: Seasonal employees, elected and appointed officials, heads of departments, deputy department heads, all confidential secretaries, all attorneys and the titles set forth in the attached Appendix A, as well as employees of the Sheriff's Department, and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the United Public Service Employees Union. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

PARAPROFESSIONALS FOR A DEMOCRATIC UNION, NYSUT,

Petitioner,

-and-

CASE NO. C-4957

ROCHESTER CITY SCHOOL DISTRICT,

Employer,

-and-

ROCHESTER ASSOCIATION OF PARAPROFESSIONALS,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding[1/] having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Rochester Association of Paraprofessionals

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[1/]The petitioner sought to decertify the intervenor and be certified as the negotiating representative.

has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances:

Included: All paraprofessionals included in the unit determination dated May 9, 1969.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Rochester Association of Paraprofessionals. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ULSTER COUNTY COMMUNITY COLLEGE FACULTY ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4973

COUNTY OF ULSTER and ULSTER COUNTY COMMUNITY COLLEGE,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Ulster County Community College Faculty Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: All full-time and adjunct/part-time faculty at the Ulster County Community College.

Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Ulster County Community College Faculty Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 200B,

Petitioner,

-and-

CASE NO. C-4977

CENTRAL SQUARE CENTRAL SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Service Employees International Union, Local 200B, has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: School Monitors.

Excluded: Substitute School Monitors and all other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Service Employees International Union, Local 200B. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SCHOOL ADMINISTRATORS ASSOCIATION OF NEW YORK STATE/GERMANTOWN ADMINISTRATORS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4978

GERMANTOWN CENTRAL SCHOOL DISTRICT,

Employer,

-and-

ADMINISTRATIVE SUPERVISORY ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,[1]

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the School Administrators Association of New York State/Germantown Administrators Association has been designated and selected

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[1] All parties agree that the Administrative Supervisory Association is defunct.

by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: Director of Guidance, High School Principal and Elementary Principal.

Excluded: All others.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the School Administrators Association of New York State/Germantown Administrators Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BINGHAMTON TEACHERS' ASSOCIATION - TEACHING ASSISTANT UNIT, NEA/NY,

Petitioner,

-and-

CASE NO. C-4982

BINGHAMTON CITY SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Binghamton Teachers Association - Teaching Assistant Unit, NEA/NY, has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Included: Licensed Teaching Assistants.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Binghamton Teachers' Association - Teaching Assistant Unit, NEA/NY. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: June 21, 2000
Buffalo, New York

Michael R. Cuevas, Chairman

Marc A. Abbott, Member

John T. Mitchell, Member